



U.S. Department
of Transportation
**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

In the matter of the petition of

**EMBRY-RIDDLE
AERONAUTICAL UNIVERSITY**

For an exemption from
§ 141.63(a)(5)(i) and (ii)
of Title 14, Code of Federal
Regulations

Exemption No **18144**
Regulatory Docket No. **FAA-2018-0618**

GRANT OF EXEMPTION

By letter dated June 15, 2018, Mr. Ryan Albrecht, Chief Instructor, Embry-Riddle Aeronautical University – Prescott (ERAU), 3700 Willow Creek Road, Prescott, AZ 86301-3720, petitioned the Federal Aviation Administration (FAA) on behalf of ERAU for an exemption from § 141.63(a)(5)(i) and (ii) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow ERAU to establish examining authority privileges for its new courses that are based on existing courses in which examining authority is currently approved for Air Agency Certificate #BF8S032Q.

The petitioner requests relief from the following regulation:

Section § 141.63(a)(5)(i) and (ii) prescribes, in pertinent part, that in order for a part 141 pilot school to receive initial approval for examining authority, that pilot school, within 24 calendar months before the date of application for examining authority, must meet the following requirements:

- (i) The school must have trained at least 10 students in the training course for which examining authority is sought and recommended those students for a pilot, flight instructor, or ground instructor certificate or rating, and

- (ii) At least 90 percent of those students passed the required practical or knowledge test, or any combination thereof, for the pilot, flight instructor, or ground instructor certificate or rating on the first attempt, and that test was given by—
 - (A) An FAA inspector; or
 - (B) An examiner who is not an employee of the school.

The petitioner supports its request with the following information:

ERAU states that its exemption request is not a request for new or additional privileges that it currently does not hold. ERAU asserts the request for an exemption is to allow it to retain the privileges the school already holds for specific certificates and ratings. ERAU cites the fact it has held examining authority on specific part 141 courses of training since the mid-1980s. ERAU states that over the years these courses have been updated and revised to maintain regulatory compliance and quality of training, which ERAU asserts, is necessary to provide the equivalent level of safety required from a program that has earned and maintained the privilege of examining authority.

ERAU notes it currently has three courses approved as special curricula courses under 14 CFR § 141.57. ERAU states these courses are combined training courses that are commonly referred to as “zero to hero” courses, and these special curricula courses are approved with examining authority. ERAU asserts that within these zero to hero courses are “stages of training” which, if viewed separately, meet all requirements listed in each applicable appendix of part 141 for certificate issuance.

Based on the FAA Training Course Outline (TCO) approval, ERAU states pilot certificates and pilot ratings were issued at each stage of training. ERAU asserts that this certificate issuance may have been contrary to § 141.67,¹ and that substantial TCO revisions by ERAU are necessary to maintain regulatory compliance and commitment to student progression. ERAU maintains that if the exemption request is granted, ERAU will split its special curricula courses into constituent parts by submitting new courses and standalone TCOs derived from the stages of its currently approved courses.

ERAU asserts in its petition that an equivalent level of safety will be maintained due to keeping the fundamental components of the courses unchanged. ERAU notes the revised courses will be fundamentally the same, using the same support materials, aircraft, and personnel. ERAU further states that the testing and evaluation of pilots, which meets or exceeds FAA testing requirements and guidance, will also remain unchanged to ensure that an equivalent level of safety is maintained.

¹ Under § 141.67, a pilot school that holds examining authority may only recommend the issuance of a pilot, flight instructor, or ground instructor certificate and rating to a person who does not take an FAA knowledge test or practical test, if, among other requirements, the person graduated from a training course for which the pilot school holds examining authority.

With respect to maintaining an equivalent level of safety while exercising the privileges of examining authority, ERAU asserts that it has several processes in place to ensure the level of quality. ERAU has an Aviation Safety Program that is run independent from the ERAU Prescott Flight Department, which provides continuous surveillance of flight operations, including annual audits. In addition, ERAU has an internally based Flight Standards Program to ensure standardization of Check Instructor conduct and Instructor Training. ERAU asserts that the ERAU Prescott Flight Standards Department has reliably demonstrated compliance with part 141 examining authority, as well as prior approval within part 142 training center evaluator requirements. In combination, ERAU states that the Flight Standards Department has successfully supported and maintained examining authority for the past 35 years. ERAU explains that, to ensure the equivalent level of safety and quality of pilot qualification through every practical test, the Flight Standards Program meets and exceeds all initial and recurrent training requirements of § 141.37. More specifically, ERAU explains how all designated check instructors complete initial and annual proficiency training on the application and conduct required of check instructor designation. Additionally, designated check instructors complete monthly ground training forums specific to evaluator conduct, which includes the review of ACS requirements for evaluations, check instructor responsibilities, and proper scenario based testing techniques.

ERAU states, if granted, the public interest would be served by maintaining examining authority privileges for the certificates and ratings that have been historically issued. The school anticipates a need for designated pilot examiners (DPEs) to administer over 270 practical tests per year should ERAU not receive examining authority. ERAU cites in its petition for an exemption, that in its discussions and strategy sessions with the Scottsdale Flight Standards District Office (FSDO), it indicated that this level of service for DPE coverage may not be possible without major economic and time losses to ERAU. ERAU states the Scottsdale FSDO is already experiencing a shortage of qualified DPEs to administer practical tests for ERAU due to the remote location of ERAU.

ERAU asserts that it has other approved part 141 courses in which it does not hold examining authority, requiring the use of DPEs to conduct those practical exams. With the current DPE availability, including the use of geographic requests from the FSDO, these practical exams have required its students to experience wait times of 6 or more weeks.

ERAU cites its Safety Management System (SMS), a panel that was convened on June 21, 2018, to apply the safety risk management processes for the proposed changes and their implications for safety. ERAU states the panel participants included the FAA's Principal Operations Inspector, ERAU's Chief Instructor, Assistant Chief Instructor, two Check Instructors, and ERAU's Aviation Safety Program Manager. According to ERAU, the SMS panel conducted a system analysis to identify hazards associated with a new training course with the exemption to § 141.63(a)(5). ERAU states this included analyzing the pre-control risk of the identified hazards, reviewing developed risk controls, and finally assessing any residual risk. ERAU states the residual risk for all identified hazards were assessed at the low risk category. ERAU states this low risk category provides an equivalent level of safety to these planned changes.

ERAU proposes in its exemption request that, if the exemption is granted, ERAU will submit for approval within 6 calendar months the following courses for certificates and ratings in which ERAU is requesting to retain examining authority privileges, which will be derived from the current courses and will be fundamentally the same as the applicable section(s) of training that are currently approved with examining authority:

- a. Appendix B Course; Private Pilot Airplane Single-Engine.
- b. Appendix C Course; Instrument Airplane;
- c. Appendix D Course; Commercial Pilot Airplane Single-Engine Land;
- d. Appendix F Course; Flight Instructor Airplane Single-Engine; and
- e. Appendix G Course; Flight Instructor Instrument Airplane.

The FAA's analysis is as follows:

A summary of the petition was published in the Federal Register on August 14, 2018 (83 FR 40384). No comments were received.

The FAA has considered the petitioner's supporting information and finds that the proposed exemption would provide a level of safety equivalent to that provided by the regulations. The FAA also finds that the proposed exemption would be in the public interest.

ERAU is a certificated pilot school under 14 CFR part 141. ERAU currently holds examining authority for three courses that are approved as special curricula courses under § 141.57. As ERAU notes in its petition, these courses are combined training courses that contain "stages of training." Each "stage of training," when viewed independently, meets the applicable minimum curriculum requirements specified in the appendixes to part 141. As such, each "stage of training" generally culminates in a pilot certificate.

To ensure regulatory compliance with § 141.67, ERAU is seeking to separate its combined courses into individual courses. ERAU will submit new courses and standalone TCOs that are derived from the "stages of training." As ERAU notes, the fundamental components of each course will remain the same. ERAU will also use the same materials, aircraft, and personnel for each course. In addition, ERAU notes that the testing and evaluation of its pilots will also remain unchanged. Therefore, the only material change being made is separating ERAU's combined courses into standalone courses. As previously mentioned, ERAU currently holds examining authority for its combined courses, which means ERAU has already satisfied the requirements of § 141.63(a)(5)(i) and (ii) with respect to those courses. Providing ERAU relief from § 141.63(a)(5)(i) and (ii) for its new independent courses will essentially allow ERAU to retain the examining authority it currently holds. Because the independent courses will be wholly derived from the current courses and fundamentally the same in all material

respects, the FAA finds that allowing ERAU to establish examining authority for its new courses would not adversely affect safety. Furthermore, as ERAU explained in its petition, ERAU will maintain an equivalent level of safety with assistance from the Aviation Safety Program at ERAU, which provides continuous oversight of flight operations, and the Flight Standards Program at ERAU, which ensures standardization of check instructor conduct and flight instructor training and includes active flight instructor observation and proficiency training.

The FAA notes that, under part 141, examining authority is issued on a course-by-course basis. Each course for which a pilot school requests examining authority is considered individually when determining whether the requirements of § 141.63 have been met. This exemption will provide ERAU relief only from § 141.63(a)(5)(i) and (ii) for the following new standalone courses:

- a. Appendix B Course: Private Pilot Airplane Single-Engine Land
- b. Appendix C Course: Instrument Airplane Rating
- c. Appendix D Course: Commercial Pilot Airplane Single-Engine.
- d. Appendix F Course: Flight Instructor Airplane Single-Engine; and
- e. Appendix G Course: Flight Instructor Instrument Airplane

To receive approval for examining authority, the FAA notes that ERAU must meet the other requirements of § 141.63(a). Pursuant to § 141.63(a)(4), the training course for which examining authority is requested may not be a course that is approved without meeting the minimum ground and flight training time requirements of part 141. Therefore, the relief provided under this exemption does not apply to a course that has been approved with reduced minima.² Consistent with the conditions and limitations in this exemption, ERAU must submit the TCOs and syllabi for its new independent courses to the appropriate FSDO for approval.

The FAA finds that ERAU's exemption is in the public interest. As stated in FAA Order 8900.2A,³ the FAA considers several factors when determining the need for DPEs, including the activity level of designees in the geographical area at issue, the public demand for DPEs, and geographic dispersion as determined by the distance the applicant must travel to get to the designee. In determining the need for DPEs in the geographical area surrounding ERAU, the FAA did not account for the large volume of students (i.e., approximately 270) graduating from ERAU's flight program because ERAU has historically held examining authority for those students. Without the relief granted in this exemption, the FAA would have to qualify

² A pilot school may request approval for a course that does not meet the minimum ground and flight training time requirements, provided certain conditions are met. One of these conditions prohibits the pilot school from requesting or obtaining examining authority for the reduced minima course. *See* 141.55

³ FAA Order 8900.2, General Aviation Airman Designee Handbook

additional DPEs to meet the demand from ERAU. The FAA notes that this alternative is impracticable because there is insufficient time for the FAA to qualify a sufficient number of DPEs in northern Arizona before ERAU's students will require practical tests. In addition, because the FAA believes that ERAU would in time (absent the relief in this exemption) obtain examining authority for the individual courses that were previously part of the combined curriculum, there is little value in expending FAA resources to qualify additional DPEs to address only a short-term need.

The FAA's Decision

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 106(f), 40113, and 44701, delegated to me by the Administrator, I hereby grant Embry-Riddle Aeronautical University – Prescott (ERAU) an exemption from 14 CFR § 141.63(a)(5)(i) and (ii) to the extent necessary to allow ERAU to establish examining authority privileges to new courses that are based on existing courses in which examining authority is currently approved for Air Agency Certificate #BF8S032Q, subject to the conditions and limitations listed below.

Conditions and Limitations

1. ERAU must separate all of the ratings and courses that are included in its current § 141.57 special curricula courses, in accordance with § 141.55, and submit these courses to the appropriate FSDO.
2. The relief provided under this exemption will become effective when ERAU obtains approval from the appropriate FSDO for the separate part 141 ratings and courses and their associated TCOs and syllabi.
3. The approval of examining authority under part 141 subpart D for the part 141 separate ratings and courses rests with the appropriate FSDO. The relief provided under this exemption applies only to the following courses:
 - a. Appendix B Course: Private Pilot Certificate – Airplane, Single Engine Land;
 - b. Appendix C Course: Instrument Rating – Airplane;
 - c. Appendix D Course: Commercial Pilot Certificate - Airplane, Single Engine Land;
 - d. Appendix F Course: Certificated Flight Instructor - Airplane, Single Engine; and
 - e. Appendix G Course: Certificated Flight Instructor - Instrument Airplane.

4. Failure by ERAU to submit to the appropriate FSDO the required TCOs and syllabi under this exemption within six calendar months from the date of this exemption automatically terminates this exemption on that date.
5. For the period of one year after the date of this exemption, at least 80 percent of the students trained in ERAU's new part 141 ratings and courses must pass the end of course test on their first attempt. Failure to meet this condition and limitation will automatically terminate this exemption.
6. The failure of ERAU to maintain the quality of training as required by § 141.83 automatically terminates this exemption and may be the basis for suspending or revoking ERAU's pilot school certificate.
7. ERAU must maintain a record, for one year, of all temporary airmen certificates it issues under this exemption and must make such certificates available to the FAA upon request. The record must consist of the information required by § 141.67(e) and ERAU.

This exemption terminates on March 31, 2021 unless sooner superseded or rescinded.

Issued in Washington, D.C., on March 12, 2019.

/s/

Robert Carty

Acting Deputy Executive Director, Flight Standards Service